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November 13, 2001

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Chair
Trade Policy Staff Committee
Office of the U.S.T.R.
600 17th Street, N.W.
Washington D.C. 20508

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**Re: Requests to exclude products from import relief under Section 203
– Investigation No. 201-TA-73 – Product 6 [Docket No. 01-27134]**

Dear Ms. Suro-Bredie:

Pursuant to the notice of request for written comments issued by the Office of the United States Trade Representative (“USTR”) in the above-referenced proceeding, 66 Fed. Reg. 54321 (Oct. 26, 2001), Galvex Estonia OÜ (“Galvex”) respectfully submits the attached request to exclude products from import relief under Section 203 in the above-referenced safeguards investigation.

Galvex is requesting the exclusion of all corrosion-resistant steel products from Estonia from the safeguard measures applied under Section 203. Although Galvex recognizes that this request does not follow the normal contours of a product-exclusion request, given the unique circumstances at issue here, Galvex is submitting these comments at this time, as a product exclusion request, to permit the Committee the maximum time available to consider our position. If the Committee chooses not to consider the following as a product-exclusion request, Galvex respectfully requests that the Committee consider this as a submission in response to the Committee’s request for comments on options for action under Section 203 (due December 28, 2001).

Respectfully submitted,

Kay C. Georgi
Mark P. Lunn

COUDERT BROTHERS
On behalf of Galvex Estonia OÜ

November 13, 2001

**BEFORE THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C.**

EXCLUSION REQUEST OF:

Galvex Estonia OÜ

Counsel:

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Mark P. Lunn
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Dated: November 13, 2001

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I. Executive Summary

Galvex respectfully submits as follows:

1. Neither Galvex, nor Estonia generally, exported flat steel products to the United States during the period of investigation. Galvex broke ground on its new facility in June of this year and is scheduled to begin production in summer 2002. Thus, the International Trade Commission ("the Commission") did not consider Estonian imports in its serious injury determination. For these reasons, neither Galvex nor Estonia could have been responsible to any degree for any serious injury suffered by the U.S. steel industry.
2. Given this situation, it would be contrary to U.S. law and the WTO Safeguards Agreement to impose remedies on Estonian steel products. Both U.S. law and the Safeguards Agreement speak to the application of remedies on the product "being imported." Likewise, U.S. law and the Safeguards Agreement permit the imposition of safeguard measures "only to the extent necessary to prevent or remedy serious injury." Where, as here, there have been no imports from a given country during the period of investigation, the country's imports cannot have caused the serious injury, and it is not "necessary" to impose safeguard measures on such imports. Indeed, imposing safeguard measures would neither remedy nor prevent the serious injury.
3. Estonia is a developing nation and corrosion-resistant steel imports from Estonia do not exceed three percent of total imports. Therefore, Galvex submits that Estonia should be excluded from any remedies imposed under Article 9.1 of the WTO Safeguards Agreement.
4. If Estonia is not specifically excluded from the remedy, Galvex respectfully requests that the President exercise his discretion, under both U.S. law and the Safeguards Agreement, to take into consideration special factors affecting trade in the product. Because Galvex and Estonia did not export steel to the United States during the period of investigation, quotas or Tariff Rate Quotas (TRQs) allocated between countries based on *past* exports would not result in the allocation of *any* quota to Estonia, and would foreclose future Estonian exports to the United States. This fact, and the fact that a developing country Member has successfully encouraged U.S. investment and established an industry for the first time, are special factors the President should consider. Galvex respectfully requests that, to recognize these factors, Estonia should be allocated 150,000 short tons of any quota or in-quota amount of any Tariff Rate Quota (TRQ).

II. The President Should Not Impose Measures on Estonian Steel Imports.

Galvex is the only steel producer of any kind in Estonia. Galvex broke ground on its hot-dipped galvanizing steel plant in Estonia in June of this year, and the plant is expected to begin operations in July 2002. For this reason, Galvex, and hence Estonia, did not export

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steel to the United States during the Commission's period of investigation, and should not be subjected to measures to remedy the injury inflicted by imports from other countries.

A. Galvex's Plant Represents Substantial U.S. Investment In a Recently Independent Democratic U.S. Trading Partner, and Will Supply Wide Thin-Gauge Galvanized Steel, for which Regional and World Demand Is Increasing.

Galvex is a newly formed Estonian company owned by two U.S. individual investors. Galvex's facility, once operational, will be the only steel manufacturing facility in Estonia, a newly independent democratic market economy of 1.3 million inhabitants. It will produce wide, thin-gauge material that other producers in the region are unable to produce for a sector and for which world demand is expected to continue to grow over both the short (next three-four years) and long term (ten years).

Failure to take into account future Estonian exports to the United States would be counter-productive as the Galvex project does not add to worldwide steel over-capacity but instead meets demand in a sector and a region where demand is rapidly increasing. Indeed, Eastern Europe is a net importer of galvanized steel and Galvex hopes to sell a substantial percentage of total production to this region.

Finally, Galvex will not receive any public aid from the Estonian Government, not even during the start-up phase. Hence, Galvex's competitiveness will solely be based on its productivity and efficient cost structure.

B. Estonia Did Not Export Steel to the United States During the Period of Investigation and Was Not Responsible for Any Injury to the Domestic Industry.

As noted above, the Galvex plant is expected to start operations in July 2002 and is the only steel plant in Estonia. Thus, during the period of investigation, Estonia did not have any steel capacity and did export any steel products to the United States.

Since no steel was imported from Estonia during any year during the period of investigation, Estonia is not responsible for any increase in imports and thus is not responsible for any injury caused to the domestic industry. Because Estonia did not participate in the surge of steel imports or any resulting injury, it should not be subject to any remedies introduced in relation to the injury found to the U.S. industry.

C. Under These Circumstances, It Would Be Contrary to U.S. Law and the WTO Safeguards Agreement to Impose Remedies on Steel from Estonia.

Under these circumstances, imposing remedies against Estonian steel products would be contrary to the letter and spirit of U.S. law. The 1974 Trade Act as amended most recently by the 1994 Uruguay Round Agreement, does not contemplate the imposition of relief on

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products originating from countries that did not export to the U.S. during the period of investigation.

Under section 2252(b)(1)(A),¹ the Commission must determine whether “an *article is being imported* into the United States in such increased quantities as to be a substantial cause of serious injury or a threat to the domestic industry.” If an article from a particular country, such as Estonia, is responsible for no imports during the period of investigation, the article is not being imported in such increased quantities as to be a substantial cause of serious injury. Thus, in this case, Estonian imports – which were non-existent during the entire period of investigation – were not considered by the Commission in its serious injury finding.

In keeping with section 2252(b)(1)(A), section 2253(a)(3) authorizes the President to proclaim, inter alia, “an increase in, or the imposition of, any duty on *the imported article*.” The “imported article” of this section refers back to the “*article [that] is being imported* into the United States” and is the basis for the injury determination.² Accordingly, the provision makes sense only if it is read to allow the Commission to recommend the imposition of remedies on imports of products of countries that were found to have caused serious injury to the U.S. industry. By necessity, the countries that did not have any imports during the period of investigation should be excluded from the remedy. In short, the President should not impose protective remedies against prospective imports that could not have affected the U.S. industry.

In this respect, U.S. law and practice accords fully with the WTO Safeguards Agreement. The WTO Safeguards Agreement provides in Article 2.1 that a safeguard measure may be applied only when such increased quantities of a “*product [are] being imported* into its territory . . . under such conditions as to cause or threaten to cause serious injury to the domestic industry.” Article 2.2 of the Agreement similarly provides that safeguard measure “shall be applied to *a product being imported* irrespective of its source.” The WTO Appellate Body has ruled that the similarity between the two phrases means that the imports subject to the injury determination should correspond to the imports to which the measure is applied.³ Accordingly,

¹ 19 U.S.C. § 2252(b)(1)(A).

² 19 U.S.C. § 2253(a)(3).

³ United States – Definitive Safeguard Measures on Imports of Wheat Gluten from the European Communities, AB-2000-10 (22 Dec 2000) (“96. The same phrase - “product ... being imported” - appears in both these paragraphs of Article 2. In view of the identity of the language in the two provisions, and in the absence of any contrary indication in the context, we believe that it is appropriate to ascribe the same meaning to this phrase in both Articles 2.1 and 2.2. To include imports from all sources in the determination that increased imports are causing serious injury, and then to exclude imports from one source from the application of the measure, would be to give the phrase “product being imported” a different meaning in Articles 2.1 and 2.2 of the Agreement on Safeguards. In Article 2.1, the phrase would embrace imports from all sources whereas, in Article 2.2, it would exclude imports from certain sources. This would be incongruous and unwarranted. In the usual course, therefore, the imports included in the determinations made under Articles 2.1 and 4.2 should correspond to the imports included in the application of the measure, under Article 2.2.”)

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the scope of the safeguard remedy should thus cover only the products originating from the exporting countries that reached the U.S. market during the period of investigation and were considered in the Commission's injury determination. A WTO member that was not exporting the product before the safeguard was introduced, and whose products were not considered in the injury determination, should therefore be excluded from the measure.

Likewise, U.S. law and the Safeguards Agreement permit the imposition of safeguard measures "only to the extent necessary to prevent or remedy serious injury."⁴ Where, as here, there have been no imports from a given country during the period of investigation, the country's imports cannot have caused the serious injury, and it is not "necessary" to impose safeguard measures on such imports. Indeed, imposing safeguard measures would neither remedy nor prevent the serious injury.

For developing countries, this exemption has been further expanded to cover countries that do export, and therefore do contribute to the injury, but do so in relatively small quantities. Article 9.1 of the Agreement of Safeguards exempts developing countries from the imposition of remedies if their imported shares do not exceed three percent individually and nine percent collectively. This developing country exemption, which also applies to Estonian steel exports, confirms that the purpose of the Agreement is to restrict the imposition of remedies to goods from exporting countries that played a substantial role in the injury.

III. Under the WTO Agreement on Safeguards, the U.S. Administration May Not Impose Measures On Imports from Developing Members Where Those Imports Accounted for Less Than Three Percent of U.S. Imports.

As a matter of public policy, the WTO Safeguards Agreement tempers safeguard remedies to protect developing country Members. Article 9.1 of the WTO Agreement on Safeguards provides as follows:

Developing Country Members

1. Safeguard measures shall not be applied against a product originating in a developing country Member as long as its share of imports of the product concerned in the importing Member does not exceed 3 per cent, provided that developing country Members with less than three percent import share collectively account for not more than nine percent of total imports of the product concerned.

Consistent with this provision, remedies should not be imposed on steel imports from Estonia because Estonia is a developing country Member and steel imports from Estonia do not exceed three percent of total imports.

⁴ Article 5.1 of the WTO Safeguards Agreement; 19 U.S.C. §2253(e)(1)(B).

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A. Estonia is a Developing Country Member and Falls Under the Three Percent Import Share Threshold.

Estonia became independent after the fall of USSR in 1991 and started to liberalize its economy at that time. Although the country has worked wonders over the past ten years, it still is a Designated Beneficiary Developing Country for purposes of the General System of Preferences ("GSP").⁵ Moreover, as the U.S. Government has recognized, Estonia is still engaged in the process of privatizing and modernizing its economy. In the Charter of Partnership among the United States of America and the Republic of Estonia, Republic of Latvia, and Republic of Lithuania, signed on January 16, 1998, the United States has acknowledged the need of the Baltic Republics for assistance in their continued development of market economy reforms, and has committed to assisting their development. In light of the Charter, as well as its overall level of development, Estonia is a developing country.

As explained above, Estonia did not produce and export steel products during the period of investigation. It thus falls under the three percent import share ceiling of Article 9.1. Furthermore, developing country members of the WTO⁶ did not account for more than nine percent of total imports of corrosion resistant steel (Product Category 6). Accordingly, we submit that, in imposing a remedy, the U.S. Administration should take into account Estonia's developing country status and exclude it from any import restriction pursuant to Article 9 of the WTO Agreement on Safeguards.

B. In Keeping With Past Decisions, the TPSC Should Recommend that Estonian Imports Be Exempted from the Measures Imposed on Other Imports.

Such an approach would be consistent with past remedy recommendations by the Commission and decisions by the President. In several recent decisions, the President has exempted developing countries which had accounted for a minor share of the import from the import restriction.

⁵ Harmonized Tariff Schedule of the United States (2001) Supplement 1, paragraph 4a.

⁶ Under Article 9, countries that are not members of the WTO, such as China and Kazakhstan, should be excluded from the computation.

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In Lamb Meat, the President imposed a TRQ with increasing volumes levels and decreasing duty level applied in each successive year of the four-year period of relief. Several countries were specifically exempted from the TRQ including “other developing countries that have accounted for a minor share of lamb meat imports, which shall be excluded from this restriction.”⁷ In Broom Corn Brooms, the President decided to impose a remedy that took the form of an increase of the duty on imported brooms. The duty was effective for a three year period and was to apply to imports from all countries except Canada and Israel and “developing countries that account for less than three percent of the relevant import over a recent representative period”.⁸ Likewise, there should be no remedies imposed on steel imports from Estonia in this case.

IV. In the Alternative, the President Should Exercise his Discretion to Recommend a Remedy Taking into Account Future Estonian Exports.

If the Commission recommends the imposition of a quota or TRQ on foreign imports and does not exclude Estonia from the imposition of this remedy, Galvex respectfully requests that the President exercise his discretion and allocate Estonia a share based on the volume and quantities of its *future* sales to the United States.

Article 5.2 (a) of the Agreement on Safeguards requires that, in allocating quotas among supplying countries among Members having a “substantial interest in supplying the product,” Members must take into account “any special factors which may have affected or may be affecting the trade in the product.” In this case, Galvex respectfully submits that the fact that Galvex and Estonia are commencing steel production in July of 2002 constitutes a “special factor” and that Estonia has “a substantial interest” with respect to the allocation of any future quota. Galvex respectfully requests that if the President determines to impose a quota or TRQ on corrosion-resistant products, Estonia be allocated 150,000 short tons as its quota or in-quota amount of the TRQ. Failure to take into account future Estonian exports to the United States in a quota or TRQ remedy would effectively ban Estonia and Galvex from the U.S. market.

V. Other Information Provided Pursuant to TPSC Notice.

Pursuant to the notice published in the Federal Register on October 26, 2001, we provide the following information:

⁷ See Proclamation No. 7208 – To Facilitate Positive Adjustment to Competition From Imports of Lamb Meat, 64 Fed. Reg. 37387, 37389 (July 9, 1999).

⁸ See Proclamation No. 6961 - To Facilitate Positive Adjustment To Competition From Imports of Broom Corn Broom, 61 Fed. Reg. 64431 (Dec. 4, 1996). By contrast, in the Line Pipe decision, the President did not explicitly make an exception for developing country members. This omission was, however, recently found to be inconsistent with Article 9.1 of the Safeguards Agreement by a WTO Dispute Settlement Panel.

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- The commercial name of the product and the HTS number under which the product enters the US: flat-rolled products of iron or nonalloy steel, of a width of 600 mm or more, clad or coated with zinc, 7210.30.0030 and 7210.30.0060.
- The names and locations of any producers, in the United States and foreign countries, of the products. The only producer of corrosion resistant steel in Estonia is GALVEX Estonia OU, Roosikrantsi 2, 10119 Tallinn, Estonia. We are unable to provide the names and addresses of all producers of corrosion resistant steel producers in the US and other foreign countries.
- The basis for requesting an exclusion. Estonian corrosion resistant steel should be excluded from any remedy because the US ITC did not investigate imports of Estonian steel in its injury investigation and imposing measures on Estonian steel under these circumstances would be inconsistent with U.S. law and the WTO Safeguards Agreement. In addition, Estonia is a developing country WTO Member and corrosion-resistant steel imports from Estonia do not exceed three percent of imports and therefore should be excluded from safeguard measures pursuant to Article 9.1 of the WTO Safeguards Agreement. Facts and arguments in support of this conclusion have been set forth in detail in the preceding sections of this submission.
- Total US consumption of the product, by quantity and value for each year from 1996 through 2000. Information for the broader product group of all coated steel products is available in Table FLAT-56 of the US International Trade Commission Staff Report in Investigation No. TA-201-73.
- Total US production of the product for each year from 1996 to 2000. Information for the broader group of all coated steel products is available in Table FLAT-17 of the US International Trade Commission Staff Report in Investigation No. TA-201-73.
- The identity of any US-produced substitute for this product. As far as we are aware, there is no product that is fully substitutable for this product.

Conclusion:

For the reasons set forth above, Galvex respectfully submits that the TPSC should recommend that Estonia be exempted from any remedies imposed on flat steel imports.

Respectfully submitted,

Kay C. Georgi
Mark P. Lunn

COUDERT BROTHERS
On behalf of Galvex Estonia OÜ